

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

JOSEPH MUGO, )  
                    )  
                    )  
Movant,           )                          No. 4:09CV00818 ERW  
                    )  
                    )  
v.                 )                          )  
                    )  
UNITED STATES OF AMERICA, )  
                    )  
                    )  
Respondent.       )

**MEMORANDUM AND ORDER**

This matter is before the Court on movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The motion will be summarily dismissed.

On May 22, 2008, movant was indicted on charges of entering into a marriage for the purpose of obtaining status as a permanent resident alien, in violation of the immigration laws of the United States. The government filed a superseding indictment, and on December 1, 2008, movant pled guilty to conspiracy to defraud the United States and falsely representing himself to be a citizen of the United States. On January 12, 2009, the Court sentenced movant to time served. See United States v. Mugo, 4:08CV317 ERW (E.D. Mo.). Movant states that he is currently detained pursuant to an order of the United States Immigration and Customs Enforcement.

Before pleading guilty, movant entered into a plea agreement with the United States. In the plea agreement, movant waived his right to bring any claim for post-conviction relief, “except for claims of prosecutorial misconduct or ineffective assistance of counsel.” Id.

Movant now moves for relief on three grounds: that he entered into his guilty plea involuntarily, that his incarceration is in violation of double jeopardy, and that his probationary period was over when he was arrested.

Pursuant to Rule 4 of the Rules Governing § 2255 Proceedings, the Court is required to conduct an initial review of the motion. Upon review, the Court is required to summarily dismiss the motion “[i]f it plainly appears from the motion . . . that the moving party is not entitled to relief . . .” Rule 4 of the Rules Governing § 2255 Proceedings.

Section 2255 relief is only available to prisoners in custody under sentence of a United States Court. 28 U.S.C. § 2255. Movant is in custody pursuant to an order of the United States Immigration and Customs Enforcement; movant is not in custody pursuant to an order of this Court. As a result, movant is not entitled to § 2255 relief.

Additionally, movant has agreed to waive any ground for relief in a § 2255 motion except for prosecutorial misconduct or ineffective assistance of counsel. He has

not brought either of these grounds in the instant motion. Consequently, he would not be entitled to relief even if he were in custody pursuant to an order of this Court.

For these reasons, the motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 will be summarily dismissed.

Accordingly,

**IT IS HEREBY ORDERED** that movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is **DISMISSED**.

**IT IS FURTHER ORDERED** that the Court will not issue a Certificate of Appealability.

An Order of Dismissal shall accompany this Memorandum and Order.

Dated this 5th Day of June, 2009.



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E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE